

July 7, 2023

Brian H. Potts
BPotts@perkinscoie.com
D. +1.608.663.7493
F. +1.608.663.7499

VIA ELECTRONIC FILING

Hon. James D. Peterson
Chief United States District Judge
United States District Court
For the Western District of Wisconsin
120 N. Henry Street
Madison, WI 53703

Re: *Friends of Blue Mound State Park v. Wisconsin Department of Natural Resources et al.*, Case No. 3:21-cv-00676-jdp

Dear Judge Peterson:

We are writing to submit a courtesy update regarding an affiliated state action between the Friends of Blue Mound State Park (Friends) and the Wisconsin Department of Natural Resources (WDNR) in the matter pending in the Wisconsin Court of Appeals, District 1 (Appeal No. 2022AP1127).

As you are aware, the current case before this Court is regarding the WDNR's retaliation against the Friends in violation of the group's First Amendment rights as well as the WDNR's violation of Wisconsin's open records law. The affiliated state action case is regarding the WDNR's approval of the Blue Mound State Park Master Plan in 2021, which included a new snowmobile trail. The Friends objected to the trail and ultimately sued the WDNR in state court, asserting that the proposed trail was in a sensitive ecological area and that the WDNR violated state law by failing to consider the environmental impacts of the trail.

On March 16, 2022, the Iowa County Circuit Court held that the Friends lacked capacity to challenge the WDNR's park-planning decisions. The court based its reasoning on the Friends' unique affiliation with the WDNR and the fact that the Friends' articles of incorporation "legally restrict[ed] [the] Friends from acting in ways that do not support the DNR's management of the Park." (Dk. 103:41; *see also* Dk. 112). The Circuit Court also concluded that the Friends' capacity to sue was restricted under Wisconsin Administrative Code NR Section 1.71. (Dk. 103:41).

The Friends appealed this decision, and on June 27, 2023, the Wisconsin Court of Appeals reversed the Circuit Court's dismissal of the Friends' petitions and held that the Friends does have capacity and standing to sue and challenge the WDNR's approval of the Blue Mound State Park

Honorable James D. Peterson
July 7, 2023
Page 2

Master Plan. The Court of Appeals has remanded the case to the state circuit court for further proceedings.

We are informing the Court of this recent development because the state court proceedings were referenced in the Friends' briefs (*See e.g.*, ECF No. 64 at 10) and the Court's Opinion and Order on February 2, 2023 (ECF No. 73 at 23).

Please see the attached decision from the Court of Appeals.

Respectfully,

Electronically signed by Brian H. Potts
Brian H. Potts

BHP